

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

RICHELE LEE HAYES
Claimant

VS.

AUTOMOTIVE CONTROLS CORPORATION
Respondent
Self-Insured

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Docket No. 201,020

ORDER

Respondent requests Appeals Board review of an Order entered by Administrative Law Judge Shannon S. Krysl dated June 20, 1995 which ordered claimant's request for preliminary benefits.

ISSUES

Respondent raises the following issues on appeal:

- (1) Whether claimant suffered an accidental injury arising out of and in the course of her employment with respondent; and
- (2) Whether claimant gave timely notice of the accident.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the preliminary hearing record and considering the briefs of the parties, the Appeals Board finds as follows:

Both of the issues raised by the respondent are issues set forth in K.S.A. 44-534a(a)(2) that grant the Appeals Board jurisdiction to review a preliminary hearing order.

Claimant requested preliminary compensation benefits for an injury to her left knee which she claims occurred on or about February 22, 1995 with repeated trauma each and every day thereafter, while working for the respondent. Administrative Law Judge Shannon S. Krysl granted claimant's request for these benefits. Respondent argues that the claimant's left knee condition developed sometime in December 1994 and is not related to her employment. Respondent also claims that notice of the accident was not given by the claimant to the respondent as required by K.S.A. 44-520. Claimant contends she

injured her left knee at work on February 22, 1995 and her work activities aggravated the injury each and every day until she had to quit work because of the pain on May 18, 1995.

On the day of the alleged accident, February 22, 1995, claimant testifies she was working packing parts for the respondent. She states that her knee "popped" and went out when she turned to put some parts on a table at her work station. Because her knee continued to hurt after the incident, she told her supervisor that day that she had hurt her knee and had to go see the company nurse. A co-worker, Kim Harman, testified on behalf of claimant and verified that she heard the claimant's knee "pop" and saw her holding the knee. The witness also testified that after this incident the claimant continued to work, but complained that her knee hurt. Ms. Harman also established that after the accident claimant's work output slowed down and she walked with an obvious limp.

Claimant testified that she notified the company nurse that she turned while performing her work duties and her knee gave out. Respondent's Director of medical services, Carolyn Ann Leiker, testified that claimant did visit the nurse's station on February 23, 1995 and not on February 22, 1995 with pain in the back of her knee which had persisted for months. Ms. Leiker went on to testify that the claimant did not relate her knee problem to an incident at work. Claimant continued working for the respondent with her symptoms worsening until May 18, 1995 when she quit because she could not stand the pain any longer.

Claimant first sought medical treatment for her left knee on her own with V.C. Patel, M.D., an orthopedic surgeon in Independence, Kansas. After being referred by her family physician, claimant first saw Dr. Patel on March 14, 1995 and his medical records indicate that she gave no history of trauma but that she did a lot of twisting and turning at work. He diagnosed a possible medial meniscus tear. Claimant was next seen by Dr. Patel on March 30, 1995 with increased symptoms in her left knee. At that time, Dr. Patel diagnosed a meniscus tear in the claimant's left knee. Dr. Patel recommended surgery to repair the tear. Respondent has denied that the claimant's left knee condition is compensable and no surgery has been performed. During claimant's testimony, she indicated that she told Dr. Patel during her first visit on March 14, 1995 that her left knee became symptomatic while performing her work duties with the respondent.

All three of the witnesses who testified in this case did so at the Preliminary Hearing which was held before the Administrative Law Judge. Accordingly, the Administrative Law Judge had an opportunity to personally observe and determine the credibility of each of the witnesses. In granting claimant's request for preliminary benefits, the Administrative Law Judge had to determine that the testimony of both the claimant and her co-worker was credible. The Appeals Board finds that the evidentiary record has established that the claimant injured her left knee while performing her work duties with the respondent and that she notified the company nurse of such injury on the date of the accident. Accordingly, for preliminary hearing purposes, the Appeals Board affirms the Preliminary Hearing Order of the Administrative Law Judge dated June 20, 1995.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Preliminary Hearing Order of Administrative Law Judge Shannon S. Krysl dated June 20, 1995, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of September, 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Dale V. Slape, Wichita, Kansas
Garry W. Lassman, Pittsburg, Kansas
Shannon S. Krysl, Administrative Law Judge
Philip S. Harness, Director